

ESTATE OF CHARLES D. ASHLEY

IBLA 78-513

Decided November 2, 1978

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offer
M 40561 (ND) Acquired.

Affirmed.

1. Administrative Procedure: Hearings—Hearings

A request for a hearing will be denied when the facts are not in dispute and the determination rests on questions of law.

2. Rules of Practice: Appeals: Generally

A request for an oral argument before the Board of Land Appeals may be denied when legal issues are well briefed and no useful purpose would be served.

3. Applications and Entries: Generally—Oil and Gas Leases: Generally—Oil and Gas Leases: First Qualified Applicant

An application for an oil and gas lease filed in the name of a person deceased at the time of filing is properly rejected as there then was no offeror qualified to hold a lease.

4. Agency—Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents—Oil and Gas Leases: Applications: Sole Party in Interest

Where a contract between an oil and gas lease offeror and a leasing service created an agency relationship, in the absence of circumstances giving the agent an authority coupled with an interest, the agent's authority ordinarily terminated upon the death of the principal. If the leasing service had an interest, a lease could not issue to the estate of the deceased if no statement was filed delineating the nature and extent of that interest as required by 43 CFR 3102.7.

5. Oil and Gas Leases: Applications: Generally

While the Department of the Interior does not require oil and gas lease drawing entry cards to be signed and dated at the same time, the signor does attest to the truth of the statements on the card as of the date of the card and is bound by and to its terms.

APPEARANCES: Scott W. Hansen, Esq., Reinhart, Boerner, Van Deuren, Norris & Rieselbach, Milwaukee, Wisconsin, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Elenore P. Ashley is the widow and personal representative of the Estate of Charles D. Ashley. This appeal is taken in behalf of the estate, from the decision dated June 2, 1978, of the Montana State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer M 40561 (ND) Acquired, for Parcel MT 789 for the reason that the applicant, Mr. Ashley, was deceased at the time of filing.

Information submitted on appeal shows that Mr. Ashley executed a service agreement with Resource Service Company (RSC) on November 18, 1977, authorizing RSC to complete and file all forms required for his participation in 240 simultaneous drawings for oil and gas leases. Mr. Ashley signed and returned all 240 cards to RSC prior to November 25, 1977. Thereafter, RSC filed cards on a monthly basis in Mr. Ashley's behalf. The agreement was for 1 year. Under the original agreement Mr. Ashley paid RSC a fee for its services in advance, in addition to agreeing to share an interest in any leases obtained by the filings.

A recent decision of this Board 1/ found standard service agreements of this type to be in violation of the regulations concerning interested parties and multiple filings. Accordingly, in April 1978, RSC sent Mr. Ashley a modification of the agreement designed to conform the agreement to the requirements of the regulations. Mr. Ashley died February 8, 1978, and the modification was directed to his widow, the personal representative of his estate. On April 14, 1978, Mrs. Ashley signed and returned the modification to RSC. On April 21, 1978, RSC dated, addressed, and placed the parcel number on one of the cards previously signed by Mr. Ashley and filed it in the Montana State Office. The card was drawn No. 1 in the May 4, 1978, drawing.

BLM, in rejecting the offer, indicated that the regulations, 43 CFR Part 3100, do not provide for filing applications in the name

1/ Alfred L. Easterday, 34 IBLA 195 (1978).

of deceased individuals. BLM also expressed incredulity over how Mr. Ashley could sign and date the drawing card on April 21, 1978, which was 2 months after his death.

In the statement of reasons appellant makes several arguments. She asserts that the card was properly completed and "statutory, judicial and board authority do impliedly, if not expressly, authorize issuance of a lease to Mr. Ashley's estate." She points out that nothing in the regulations requires an applicant to sign the card during the 5-day filing period. Appellant states her belief that she followed "the only procedure recognized by the Department of the Interior with regard to such a filing," citing several cases as authority for granting rights pursuant to applications filed in the name of a deceased individual. As executor of the estate, appellant argues that she steps into the shoes of the decedent and is bound by and authorized to enforce his contracts. Under the modified contract with the filing service, she asserts that use of such a service is permissible. Finally, she states that she and the heirs have submitted the necessary statements of citizenship and qualifications to hold a lease. Appellant has also requested an administrative hearing and an opportunity for oral argument.

[1] A request for a hearing will be denied when the facts are not in dispute and the determination rests on questions of law. Concho Petroleum Company, 22 IBLA 139 (1975). There is no disagreement concerning the facts of this appeal. The issue is legal: whether

an oil and gas lease can be issued when the application was filed in the name of one who was deceased at the time of filing. A hearing would be of little help in resolving this matter and, therefore, will not be granted.

[2] A request for an oral argument before the Board of Land Appeals may be denied when legal issues are well briefed and no useful purpose would be served. Cf. Silver Monument Minerals, Inc., 14 IBLA 137 (1974). Accordingly, the request for an oral argument is also denied.

[3] An application for an oil and gas lease filed in the name of a person deceased at the time of filing is properly rejected as there was then no offeror qualified to hold a lease. Had the applicant died after filing the application but prior to issuance of the lease, his personal representative, heirs or devisees would be entitled to the lease if there was a proper offer to lease "which will be effective as of the effective date of the original application or lease offer filed by the deceased." 43 CFR 3102.8. Appellant's assertion that the card was properly completed avoids the real issue of whether or not there was a qualified applicant for this parcel. Under 30 U.S.C. § 181 (1976) and 43 CFR 3102.1-1, only citizens of the United States, associations, corporations, or municipalities may hold interests in oil and gas leases. Only such entities are proper offerors. 43 CFR 3112.2-1. The fact that Mr. Ashley died before the offer was filed precludes a finding that there was a qualified

applicant. Merely because there is no requirement that the card be signed within the 5-day filing period, does not give license to file cards in the name of nonexistent or deceased persons.

Appellant cites several decisions in support of her argument, mistakenly assuming a similar factual situation exists. Appellant asserts that Drake v. Simmons, 54 I.D. 150 (1933) is closely on point. There is one major difference between the facts of Drake and those involved here. In Drake, the applicant was living at the time the application was filed, but died prior to issuance of the permit. The same is true in Walter Kearin & Legatees of Peter Fern, 53 I.D. 699 (1932), also cited by appellant. Appellant cites no cases, nor have we discovered any, where an application filed in the name of a decedent has conferred rights upon the estate.

In Fox Film Corp. v. Knowles, 261 U.S. 326 (1923), the Supreme Court approved allowing an author's executor to renew a copyright even though the author died prior to the period in which the renewal application could be filed. Appellant's reliance on this case is misplaced; there the statute itself allowed renewal by the widow or executor. Here, the requirement of a qualified applicant, 30 U.S.C. § 226(c) (1970), 43 CFR 3102.1-1, read in conjunction with the provision for issuing the lease to the estate or heirs, 43 CFR 3102.8, forecloses the applicability of the Fox rationale to the facts and law of this case.

The regulation, 43 CFR 3102.8, 2/ while not specifically addressing the applicant's status as living or deceased in conferring the right to a lease upon his heirs, when read with the general regulation governing who is qualified to file an application for a lease, 43 CFR 3102.1-1, is not ambiguous. The general rule is that the death of the offeror prior to acceptance of the offer, terminates it. Williston on Contracts, § 62 (3d Ed. 1957). The regulation creates a narrow exception to the general rule but cannot be read to imply that a deceased individual can be an offeror. The policy of the Department relied on by appellant in interpreting its regulations "to resolve latent ambiguities in favor of public land applicants," Georgette B. Lee, 3 IBLA 272, 276 (1971), has no place where the regulation, applied with common sense, is not ambiguous.

Appellant also relies on a general principle of the law that the executor "steps into the shoes of his decedent," and may enforce the decedent's contracts (Statement of Reasons at 11). However, generally the personal representative is bound by the outstanding contract obligations of the decedent except where the obligation is personal, or terminated by death or otherwise discharged. 33 C.J.S. Executors and Administrators § 189 (1972). The personal representative is not

2/ 43 CFR 3102.8 provides in pertinent part: "If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees * * *." (Emphasis supplied.) This language assumes the offer (application) is made prior to the death of the applicant.

empowered to make anew or enlarge a contract for the decedent, nor to ratify his void transactions. Id. The personal representative of Mr. Ashley, appellant, had no authority to sign the modification of the service agreement with RSC. The old agreement violated the regulations. The new agreement, if of any force whatsoever, was a new and separate contract between Mrs. Ashley and RSC. It is separate and distinct from the right or eligibility of a decedent to apply for an oil and gas lease. The contract is an agreement between private parties and cannot confer upon them rights in public lands not authorized by law.

[4] The contract between Mr. Ashley and the leasing service created an agency relationship. In the absence of circumstances giving the agent an authority coupled with an interest, the agent's authority ordinarily terminates upon the death of the principal. 2A C.J.S. Agency § 135 (1972). Generally the agency is terminated immediately upon the principal's death, regardless of whether or not all the acts contemplated by the principal and agent as being authorized have been completed. 2A C.J.S. Agency § 137 (1972). Where the agent has an interest in the subject matter, death does not automatically terminate the agency. 2A C.J.S. Agency § 136 (1972).

If the leasing service here held an interest in the lease, the lease could not issue to the deceased or his estate because no statement was filed delineating the nature and extent of that interest as

required by 43 CFR 3102.7. Lola I. Doe, 31 IBLA 394 (1977). Appellant herself signed, for the decedent, a new contract with the leasing service in an attempt to avoid the problems created when such a service holds an interest in the leases it aids its clients in obtaining. Whether we view the agency as terminated upon the death of Mr. Ashley or not, the filing of the card gained the estate no right to an oil and gas lease because if RSC had no interest in the lease, their authority to file applications in his name terminated; if there was still an interest, and the agency continued, the filing violated regulations 43 CFR 3102.7 and possibly 3112.5-2.

[5] While this Board has never required the drawing entry cards to be signed and dated at the same time, the signor does attest to the truth of the statements on the card as of the date of the card and is bound by and to its terms. Evelyn Chamber, 31 IBLA 381 (1977). Where the signor is dead as of the date on the card it cannot be said there was a person who attested to the veracity of the statements on the card, nor one who would be bound to a lease. Noncompetitive oil and gas leases must be issued to the first-qualified applicant. Walter M. Sorensen, 32 IBLA 345 (1977). As there was no qualified applicant, the lease offer must be rejected. The fact that the heirs of Mr. Ashley have now submitted statements of citizenship and qualifications to hold a lease can gain them no priority under the simultaneous leasing provisions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

